IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 21770 of 2005(N)

PETITIONER:

A.V.KRISHNAN NAIR, AGED 82 YEARS,
S/O.RAMAN NAIR, KALLISSERY AMSOM,
ANCHAMPEEDIKA P.O., MOTTAMMAL(VIA).

BY ADV. SRI.M.SASINDRAN
SRI.SREEJITH S.NAIR

RESPONDENTS:

---

1. THE DISTRICT COLLECTOR, KANNUR.

2. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
ADMINISTRATION, THIRUVANANTHAPURAM.

3. UNION OF INDIA, REPRESENTED BY UNDER
SECRETARY TO THE GOVERNMENT,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHER'S CELL,
LOK NAYAK BHAVAN, NEW DELHI.

BY ADV. SRI. K.V MANOJ, GOVERNMENT PLEADER
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE SWATHANTRA SAMMAN PENSION SCHEME.

EXT.P2: TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE ISSUED BY A PROMINENT FREEDOM FIGHTER SHRI. K.P.R. RAYARAPPAN DATED 27.10.1998.

EXT.P3: TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE ISSUED BY A PROMINENT FREEDOM FIGHTER SHRI. M.P. NARAYANAN NAMBIAR DATED 27.10.1998.

EXT.P4: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 28.06.1999.

EXT.P5: TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 16.01.1999 SANCTIONING PENSION TO THE PETITIONER UNDER THE KERALA FREEDOM FIGHTERS PENSION SCHEME.

EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 10.11.2003 OF THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R3(a): TRUE COPY OF THE LETTER DATED 13.01.2006 ISSUED BY THE 3RD RESPONDENT TO THE GOVT. OF KERALA.

/True Copy/

P.A to Judge.

T.R. RAMACHANDRAN NAIR, J

==========

W.P.(C) NO. 21770 OF 2005

==========

Dated this the 2nd day of August, 2007.

JUDGMENT

The main prayer in the writ petition is for a direction to the 3rd respondent to consider and pass orders on Ext.P4 application submitted by the petitioner for grant of pension under the Swathantra Sainik Samman Pension Scheme, 1980. The claim of the petitioner is that he had participated in Morazha Struggle which took place in the erst while Malabar district. His plea is that he had remained underground for more than 8 months for a period from 15.09.1940 to 15.05.1941. The petitioner was a proclaimed offender and warrant of arrest was issued against him. In connection with his participation in the above struggle, he has relied on Exts.P2 and P3 certificates issued by two prominent freedom fighters in this regard.

2. Ext.P4 is the application dated 28.6.1999 submitted by the petitioner for grant of pension. Ext. P5 would show that he was a recipient of pension under the Kerala Freedom Fighters

Pension Scheme. By Ext.P6, the petitioner was informed that his application for sanction of pension has not been recommended by the State for the reason shown therein. They related to the details regarding the case in which the petitioner was an accused or the details of the Police Station where FIR was lodged and also non-production of official records or the non availability of records certificates. It is also stated that the affidavit to be accompanied with the application is also not enclosed.

3. The 3rd respondent has filed a counter affidavit wherein it is stated that the State Government has been requested to make available a copy of the application submitted by the petitioner along with the papers and documents pertaining to the claim as per the Ministry's letter dated 13.01.2006 since the files are not easily traceable. It is assured that on receipt of the original application, the documentary evidence and verification cum entitlement to pension report of the State Government, the case will be examined on merits as per the provisions of the SSS pension Scheme.

4. In the counter affidavit filed by the 2nd respondent it is admitted that the petitioner is a recipient of Kerala Freedom Fighters pension. It is averred that in the event of the petitioner claiming for underground suffering for the period from 15.09.1940 to 15.09.1941, he has to produce documents as above to substantiate his claim. It is also stated that personal knowledge certificates can be accepted only if it is supported by non availability of reports certificates from the authorities. It is further pointed out that Ext.P6 is the communication pointing out the defects of the application and he could have rectified the same. It is also assured that if the defects are rectified, the case can be recommended for Swathantra Sainik Samman Pension.

5. Therefore, it is up to the petitioner to reply to Ext.P6 and produce relevant documents so that the authorities of the State will be able to recommend his case for grant of pension. The petitioner will have to produce either the records relating to warrant of arrest etc. or the non-availability of records certificate to the State Government for enabling the State Government to

send their recommendation. The petitioner is free to file a fresh representation for producing the relevant materials as required in Ex.P6. On receipt of the relevant records from the petitioner, the respondents 1 and 2 will consider the same and forward the required report to the Union of India for action at their end and the same shall be done within a period of two months from the date of receipt of the representation of the petitioner. On receipt of the report from the State Government, the 3rd respondent will take appropriate action within a further period of three months thereof.

The writ petition is disposed of accordingly.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv